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California Air Resources Board
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Members of the California Air Resources Board:

We respectfully submit these comments to the California Air Resources Board (CARB) outlining certain steps we believe would assist companies in their efforts to comply with Senate Bill No. 261, the Climate-Related Financial Risk Act (SB 261). Based on discussions with clients and broader industry feedback, we believe that CARB should issue (i) guidance to provide companies with appropriate flexibility in aligning with external reporting frameworks, consistent with the intent of SB 261, and (ii) an enforcement notice similar to the SB 253 notice issued last year.

Guidance Relating to Reporting Requirements

There appears to be some question as to whether SB 261 requires reports fully aligned with the TCFD or other external reporting frameworks, which would include disclosure relating to each recommendation in the reporting frameworks, such as scenario analyses and Scope 1 and 2 emissions. In particular, it has come to our attention that some consultants and advisors are interpreting SB 261 to require companies with between $500 million and $1 billion in revenues to publish their Scope 1 and 2 greenhouse gas emissions because that data is required under a fully-aligned TCFD report. We see nothing indicating the legislative intent of SB 261 was to mandate emissions reporting for companies under $1 billion in revenues. Indeed, emissions reporting for companies with over $1 billion in revenues is separately and expressly mandated by SB 253, a separate statute that was enacted nearly simultaneously by the California legislature. Rather, we read SB 261 to provide broad latitude to reporting companies to determine the appropriate degree of alignment to an external framework, such as the TCFD, so long as their report includes disclosures relating to the two core topics identified in §38533(b)(1)(a) – (i) a description of a company's climate-related financial risk, and (ii) measures adopted to mitigate or adapt to those risks. We offer the following analysis in support of this conclusion:

1. SB 261 specifies at §38533(b)(1)(a) that climate-related financial risk reports focus on two topics—(i) disclosure of a company's climate-related financial risk and (ii) measures adopted to reduce and adapt to such risks. It follows that required disclosures should focus on the elements of external frameworks related to the identification of risks and the description of risk mitigation strategies, rather than tangential matters, such as descriptions of board oversight processes, climate resilience scenario analyses, descriptions of risk management programs, or disclosure of GHG emissions or target metrics. We believe the two most relevant TCFD

recommended disclosures are topic A (description of climate risks) under the Strategy pillar and topic B (description of processes for managing climate-related risks) under the Risk Management pillar.

2. §38533(b)(1)(b) provides that, regardless of the nature of "required disclosures," companies need not provide fully complete reporting and shall instead provide recommended disclosures to the best of their ability and "provide a detailed explanation for any reporting gaps."
3. §38533(b)(5) explicitly contemplates that disclosures under SB 261 will not necessarily include "a description of a covered entity's greenhouse gases . . ."
4. As mentioned previously, GHG emissions reporting is separately mandated under SB 253, enacted at practically the same time by the California legislature SB 261, and SB 253 involves a reporting threshold ($1 billion) twice that of SB 261 ($500 million). There is no indication in the legislative history of SB 261 that any legislators understood this statute to create a GHG emissions reporting regime supplementing SB 253. Creating a backdoor emission reporting requirement for lower revenue companies would be contrary to the legislature's intent of limiting such onerous disclosures to larger companies.

In addition to these textual considerations, we believe there are strong public policy arguments for providing companies with flexibility in their alignment with external reporting frameworks:

1. Requiring reports fully aligned with external reporting frameworks would mandate disclosures on numerous topics only tangentially related to the core focus of SB 261; and

2. External reporting frameworks, such as the TCFD, are designed to support voluntary reporting and are not comparable to the clear requirements that are generally found in statutes and regulations. As a result, it would be inappropriate to require strict alignment with such frameworks. While many regulations in the U.S. and other jurisdictions have been based on the TCFD and other frameworks, including the SEC's 2023 climate rules, this usually involves translating these complex standards into specific and actionable requirements. Given that SB 261 declines to do so, it is reasonable to conclude that companies are expected to exercise discretion.

Given all of this, we respectfully request that CARB clarify that the legislative intent of SB 261 is to require disclosures specifically focused on the topics identified in the statute: (i) the description of risks and risk mitigation strategies, and (ii) that SB 261 does not mandate disclosures on other topics contained in external reporting frameworks, including, but not limited to, scenario analysis or GHG emissions. We believe this approach strongly aligns with the statutory purpose and public policy. To avoid further confusion for companies with revenues between $500 million and $1 billion who did not anticipate public GHG emissions reporting under SB 261, we believe issuing the requested guidance would serve the public interest by allowing smaller reporting companies to focus their time and resources preparing the core disclosures required by the statute.

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Enforcement notice for SB 261

We respectfully request that CARB issue an enforcement notice for SB 261, modeled on the notice issued for SB 253. The SB 253 notice announced a lenient approach to enforcement under a good faith standard, stating: "for the first reporting cycle, CARB will not take enforcement action for incomplete reporting against entities, as long as the companies make a good faith effort to retain all data relevant to emissions reporting for the entity's prior fiscal year. CARB will provide details on reporting for subsequent year reporting cycles as part of CARB's rulemaking process." Given the similar purpose and overlapping impact of these statutes and recognizing that SB 261 combines less clear reporting requirements with an earlier reporting deadline for initial disclosures than under SB 253, we believe there are strong policy reasons to provide a comparable enforcement notice for SB 261. This notice should allow for non-enforcement for good faith efforts to provide disclosures broadly consistent with general market practice for voluntary reporting under frameworks such as the TCFD, especially where such disclosures are consistent with a company's prior reporting. We believe an enforcement notice is appropriate under the circumstances and would be especially important if CARB declines to issue guidance about the content of reporting requirements as requested above in advance of the initial January 1, 2026, reporting deadline.

Sincerely,

Beth Sasfai